

NOT DESIGNATED FOR PUBLICATION
ARKANSAS COURT OF APPEALS

DIVISION II
No. CA07-1225

DENNIS PARKER,
APPELLANT
V.
PETIT JEAN POULTRY, INC. AND
LIBERTY MUTUAL FIRE
INSURANCE COMPANY,
APPELLEES

Opinion Delivered OCTOBER 8, 2008

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION,
[NO. F313430]

AFFIRMED

SAM BIRD, Judge

Dennis Parker appeals an August 29, 2007 decision of the Arkansas Workers' Compensation Commission that denied his request for benefits related to a lower-back injury. The Commission, affirming and adopting the decision of the administrative law judge, found that a preponderance of the credible evidence failed to show either 1) that Parker sustained an injury "arising out of and in the course of his employment" or 2) that the injury was established by medical evidence supported by objective findings. Parker contends on appeal that he established by a preponderance of the evidence the compensability of his injury. We disagree and affirm the decision of the Commission.

Under Arkansas Code Annotated section 11-9-102(4)(A)(ii)(b) (Supp. 2007), the claimant has the burden of proving that the injury "arose out of and in the course of his employment." Where, as here, a claim has been denied because of the claimant's failure to

meet his burden of proof, the substantial evidence standard of review requires that we affirm if the Commission's opinion displays a substantial basis for the denial of relief. *Williams v. Ark. Oak Flooring Co.*, 267 Ark. 810, 590 S.W.2d 328 (Ark. App. 1979). We view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirm if they are supported by substantial evidence, i.e., evidence that a reasonable person might accept as adequate to support a conclusion. *Singleton v. City of Pine Bluff*, 97 Ark. App. 59, 244 S.W.3d 709 (2006).

Parker contended at a hearing before the administrative law judge that he sustained a compensable injury to his lower back at work on August 20, 2003, when he was emptying ice from a large bin and his back "popped." He testified that the pain was deeper than he had experienced from a football injury during his military service in 1978 or 1979, for which he had received VA treatment, and that he had "never had a workers' compensation claim or something similar" before the incident at issue. He stated that in 1993 Petit Jean did not inquire about back problems or conditions when he was hired as a "dumper," whose job duties required dumping seventy-pound crates of chickens into bins.

Parker stated that he reported his work injury to Petit Jean's nurse the day it occurred, that she filled out a report and he signed it, and that he reported the injury to his supervisor "Ralph" both that day and the next. He said that his employer made no arrangements for anyone to examine his back, that he did not work during a twelve-week period when he went to doctors on his own, and that his employer refused to provide light-duty work although he provided doctors' slips regarding this treatment.

Parker stated on cross-examination that he first had back problems when he played

football in the Army, but he denied having chronic back pain after leaving the military. He acknowledged his contradictory testimony in a 2004 deposition that chronic pain had existed “ever since” the Army but that he had no more back complaints. He said that he went to the VA from January until August 2003 for reasons other than his back, that he was seen there for his back because it was hurting but not because he was incapacitated, and that he had seen doctors about his back while he was in the Army. He acknowledged writing on a pre-employment questionnaire at Petit Jean that he had no problems with his back. He testified that he worked at a second job for Moss Automotive and before 1993 had worked as a truck driver.

Parker’s medical records from the VA were introduced into evidence. The records of July 2003 refer to his twenty-five-year history of chronic low-back pain; an evaluation for low-back pain on August 21, 2003, the day after his alleged lifting injury at Petit Jean, does not refer to a work-related injury; and the records show that he ranked his pain as nine out of ten before August 20. Under questioning by the administrative law judge, Parker testified that he could not remember all the dates he worked and when he began missing work, but he acknowledged stating in his deposition that missed no work until October 6, 2003.

Jeannie Cox, a supervisor over Parker, testified that she received no notice from him or the nurse of an injury on August 20, 2003, but that he had reported a head injury and a knee injury on separate occasions before August. She stated that he had once attributed an incident of “blacking out” on the job to medication he was taking, that she was not aware he was being treated at the VA for back complaints from May 2003 until the incident in August 2003, and that she was not aware until after his employment ceased of his contention

that he injured his back on the job in August 2003. She testified that Ralph Williams was the head of Parker's department. It was Williams's stipulated testimony that he lacked knowledge of Parker's claim for an August job injury.

Parker complains on appeal that the Commission's 2-1 decision, by incorporating the findings of the administrative law judge, made no specific factual finding to support its finding that he did not meet his burden of showing that he sustained a compensable injury. Parker points to the dissenting commissioner's factual findings as establishing his credibility, and he notes the dissent's reliance upon two doctors' opinions as corroborating his testimony and establishing the existence of the injury. We first note that the Commission is permitted to adopt the decision of the administrative law judge, thereby making the law judge's findings and conclusions those of the Commission. *Death & Perm. Total Disab. Trust Fund v. Branum*, 82 Ark. App. 338, 107 S.W.3d 876 (2003).

Determinations of credibility and the weight to be given the testimony are within the exclusive province of the Commission. *Powers v. City of Fayetteville*, 97 Ark. App. 251, 248 S.W.3d 516 (2007). The issue is not whether we might have reached a different result or whether the evidence would have supported a contrary finding; if reasonable minds could reach the Commission's conclusion, we must affirm its decision. *White v. Frolic Footwear*, 59 Ark. App. 12, 952 S.W.2d 190 (1997). Here, the Commission noted medical records showing Parker's twenty-five year history of chronic back pain, and the Commission's opinion clearly shows that it did not believe Parker's testimony that his back problems were attributable to a work-related incident of August 20, 2003. Therefore, the Commission's decision displays a substantial basis for the denial of this claim.

Affirmed.

GRIFFEN and GLOVER, JJ., agree.